THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 23249 of 1995

12-12-2006

Between:-

M/s. Raasi Cement Ltd.,
(An assisted Unit of APIDC),
Vishnupuram (Wadapally) Nalgonda dist.,
Rep., by its Law Officer & G.P.A.,
Holder M.S. Trivikrama Rao.

Petitioner

And

The A.P. State Electricity Board,
Rep., by its Secretary,
Vidyut Soudha, Somajiguda,
Hyderabad and two others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 23249 of 1995

Oral order:

The second respondent, by the proceedings dated 09-10-1995, called upon the petitioner to pay as part of the bill for September, 1995 additional charges of Rs.13,63,745-14 paise towards the delayed payment of the excess availed rebate amount. Assailing this demand, the writ petition is filed.

The petitioner is a manufacturer of cement. In view of the location of the industry, Government offered incentives as per the then extant policy. The incentive in question (and relevant to the purposes of this writ petition) is 25% rebate on power tariff, for an initial period of three years. The date with effect from which the tariff is available was a matter of contention earlier.

The petitioner was given power connection for 3 MVA on 09-01-1981 (a High Tension supply) for enabling a trial run of the machinery for the purpose of installation of the plant. The petitioner claims to have gone into trial production on 23-03-1981 and eventually into commercial production with effect from 01-11-1981. The petitioner applied for the incentive proposed by the Government policy. The Industries Department, on 22-06-1981 granted an 'eligibility certificate' enabling the

petitioner to claim rebate with effect from 03-03-1980, a date anterior even to the date High Tension supply for trial run was given to the petitioner (on 09-01-1981). Later, the Industries Department revised its earlier certificate and granted rebate from 23-03-1981, the date from which the petitioner claims to have commenced trial production. Thereafter the petitioner represented to the Industries Department for rebate from 01-11-1981, the date from which the petitioner claims to have gone into regular production. A revised 'eligibility certificate' is stated to have been granted by the Industries Department on the basis of the petitioner's representation aforesaid. Thereafter, by a letter dated 05/07-10-1991, the second respondent directed the petitioner to pay a sum of Rs.1,05,23,708-46 paise by confining the rebate with effect from 03-03-1981 as initially proposed. Assailing this demand raised by the second respondent, the petitioner filed W.P.No.13693 of 1991. As demand was raised without notice and opportunity, the writ petition was disposed of at the stage of admission directing the second respondent to consider the representation of the petitioner for alteration of the date with effect from which the rebate is to be applied and granting interim stay on the collection of the demand, till the disposal of the petitioner's representation.

After the disposal of W.P.No. 13693 of 1991, the second respondent by a letter dated 22-07-1993 allowed the rebate with effect from 23-03-1981 and claimed Rs.32,17,717-90 paise as due from the petitioner towards additional charges reckoning the rebate as allowable for a period of three years with effect from 23-03-1981. Assailing this demand, the petitioner filed W.P.No. 14780 of 1993. Admittedly, this writ petition was dismissed on 01-08-1995 whereagainst the petitioner filed W.A.No. 965 of 1995. Admittedly, the writ appeal was also rejected. During the pendency of W.A.No. 965 of 1995 and on the basis of the petitioner's liability

consequent on the dismissal of W.P.No. 14780 of 1993, the second respondent issued the demand impugned in this writ petition (dated 09-10-1995).

In accordance with the installments granted by the interim orders in W.P.No. 14780 of 1993 (for payment of the demand of Rs.32,17,717-90 paise), the petitioner had paid Rs.5,00,000-00; Rs.5,00,000-00 and Rs.22,17,717-90 paise on 03-03-1994, 02-05-1994 and 07-09-1995 respectively. The demand dated 31-07-1993 called upon the petitioner to pay a total amount of Rs.32,17,717-90 paise pursuant to the decision of the second respondent contained in his letter dated 22-07-1993 allowing the rebate from 23-03-1981 and raising the additional charges due on the basis of the rebate allowed with effect from 23-03-1981.

Sri Duba V. Nagarjuna Babu, the learned counsel appearing for the petitioner asserts that since there was no fault of the petitioner-Industry in failing to pay the demand of Rs.32,17,717-90 paise in view of interim orders obtained in W.P.No. 14780 of 1993 and in view of the fact that the petitioner had paid installments in accordance with the interim direction granted, the current demand for additional charges for delayed payment of amounts is arbitrary and irrational. It is alternatively contended that apropos the phraseology of Condition No. 32.1 and 32.2.1(a) of the Terms and Conditions of Supply of Electricity Energy by the APSEB (for short 'the Terms and Conditions'), which is the legal architecture admitted to be binding on the parties, the respondents do not have any power, authority or jurisdiction to levy additional charges for delayed payment of the revised liability, revised consequent on the alteration of date with effect from which the rebate facility is allowable.

On the factual matrix adverted to above, the conclusion is irresistible that consequent on the petitioner's failure in its litigative campaign in

W.P.No. 14780 of 1993 culminating in the dismissal of W.A.No. 965 of 1995, the demand of Rs.32,17,717-90 paise raised in the second respondent's proceedings dated 22-07-1993 is legitimate and binding on the petitioner. This demand is in pith and substance towards the energy charges payable by the petitioner for the power supplied to it on an appropriate reckoning of the date with effect from which the rebate is allowable to it. Condition Nos. 32.1 and 32.2.1(a) of the Terms and Conditions read as under:

> **32.1 The Board shall as far as possible within 15 days after the expiration of each calender month cause to be delivered to every consumer a bill of charges stating the amounts payable by the consumer towards charges for energy supplied and any other sum in connection with supply of energy by the Board. The net total amount of the bill shall be rounded off to the nearest rupee. Amount less than 50 paise will be ignored and the amount of 50 paise and above will be rounded off to the next higher rupee.**
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> **32.2.1(a) Bills shall be paid by the High Tension Consumers within 15 days and Low Tension consumers within 14 days from the date of the bill, failing which the consumer shall be liable to pay additional charges at the rates as prescribed by the Board from time to time and notified in the Tariff Notifications of the Board. In the case of consumers covered by Card System of billing the payment shall be made in the manner specified in the tariff applicable to such consumers.**

On a true and fair construction of the provisions of Condition Nos. 32.1 and 32.2.1(a) of the Terms and Conditions, it is clear that the respondents should within fifteen days from the date of expiration of fifteen days of each calender month must furnish to every consumer a bill of charges specifying the amounts payable by the consumer towards charges for energy supplied. This is the obligation of the respondents. The corollary obligation of the consumer is spelt out in Condition No.32.2.1(a). The obligation of High Tension Consumers (which the

petitioner admittedly is) is that the bill should be paid within fifteen days from the date of the bill, failing which the consumer shall be liable to pay additional charges at the rates prescribed by the Board from time to time and notified in the Tariff Notifications of the Board.

The petitioner does not dispute the rebate at which additional charges have been computed in the impugned demand. What it contends is that the demand raised in the second respondent's proceedings dated 22-07-1993 (calling upon the petitioner to pay Rs.32,17,717-90 paise) is not a bill of charges towards energy supplied. This is a contention that is stated to be rejected. Normally, the petitioner as a consumer was obligated to pay 100% of the charges of the energy consumed in accordance with the applicable tariff. What the petitioner got was a benefit of 25% rebate. The relevant date for reckoning the application and commencement of the rebate, on the basis of which the second respondent's proceedings dated 22-07-1993 was issued, is now unquestionable in view of the failed litigative ventures of the petitioner *qua* the dismissal of W.P.No. 14780 of 1993 and W.A.No. 965 of 1995. Consequently, the demand contained in the second respondent's proceedings dated 22-07-1993 constitutes a bill towards energy charges in every sense of the term. Since the petitioner admittedly did not pay the said bill and in terms thereof and within the time stipulated in Condition No. 32.2.1(a) of the Terms and Conditions, the petitioner is liable to the additional charges. This is what the impugned demand constitutes. On this interpretation and analysis, the demand is not liable to be interfered with.

There are no merits in the writ petition. The writ petition is accordingly dismissed. In the circumstances of the case, no costs.

GODA RAGHURAM, J

Dated:12-12-2006
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